

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

This document relates to:
Hardeman v. Monsanto, 3:16-cv-00525-VC

**PRETRIAL ORDER NO. 104:
SCOPE OF DR. ARBER'S TESTIMONY**

Dkt. No. 2934


Dr. Weisenburger's testimony did not open the door to a discussion of Mr. Hardeman's rate of BCL6 rearrangement. Dr. Weisenburger offered an opinion that Mr. Hardeman's antiviral treatment eliminated any gene rearrangements that might have been caused by hepatitis C. That opinion only opens the door to a discussion of BCL6 if NHL caused by hepatitis C is uniquely associated with BCL6 rearrangements. The papers Monsanto cites establish only that hepatitis C, like numerous other risk factors, is capable of causing BCL6 mutations – not that it is uniquely capable of doing so. Because Dr. Arber asserted in his reports that nothing about Mr. Hardeman's disease "suggest[s] a specific cause," he cannot now connect Mr. Hardeman's pathology results to hepatitis C. If Dr. Arber were to testify that Mr. Hardeman's genetic abnormalities suggest a history of hepatitis C infection, there is an undue risk (and a very strong one) that the jury would connect those abnormalities to NHL. This testimony is thus inadmissible both under Rule 403 and because it would be contrary to Dr. Arber's reports.

Of course, Dr. Arber is free to dispute Dr. Weisenburger's testimony that any genetic abnormalities from hepatitis C would have disappeared after Mr. Hardeman's treatment. If Dr. Arber has a study showing that abnormal cells do not die off once a virus has been cleared, he can

use that to rebut Dr. Weisenburger's discussion of the Zuckerman article. And, in line with his report, Dr. Arber can explain that Mr. Hardeman's lengthy exposure to hepatitis C left him at risk of developing NHL even after the virus had been successfully treated. But, because it would be inconsistent with his reports and because it would not properly rebut anything that Dr. Weisenburger stated in his testimony, Dr. Arber cannot point to the presence of BCL6 rearrangements to suggest that Mr. Hardeman has lingering genetic damage from hepatitis C.

IT IS SO ORDERED.

Date: March 7, 2019



Honorable Vince Chhabria
United States District Court